agreement between the appellants and the respondents and giving judgment in favour of the appellants. The learned District Judge also held that the charges claimed by the appellants in that action were the very charges that the respondents undertook to pay.

In the circumstances this appeal will be allowed and the judgment of the High Court set aside and the original judgment of the District Court restored. The appellants shall have the costs of this appeal and the costs of the courts below.

Appeal allowed.

Solicitors: *Yap & Yap; Rodyk & Davidson.*

RE JOSEPH FRANCIS LOPEZ

[O.C.J. (Chua J.) January 27, 1976]
[Singapore — Originating Motion No. 5 of 1975]

Medical Practitioner — Professional misconduct — Infamous conduct — Medical certificates — Certificates issued signed by unqualified person — Medical Registration Act (Cap. 218).

The appellant, a registered medical practitioner, faced disciplinary charges before the Medical Council of Singapore under the provisions of the Medical Registration Act (Chapter 218). The disciplinary charges alleged that the appellant was guilty of infamous conduct in a professional respect, the allegations being that on various occasions between November 1973 and January 1974 he did allow one S. S. Pillai of his clinic to issue and sign medical certificates to various patients when the said S. S. Pillai was not a registered medical practitioner within the meaning of the Act. At the conclusion of the disciplinary enquiry, the Medical Council deliberated and came to the unanimous decision that the appellant was guilty of the disciplinary offences as charged and unanimously decided to remove the appellant's name from the Medical Register. Costs were also awarded against the appellant. The appellant appealed against the decision of the Medical Council on the following grounds:—

1. The decision of the Medical Council was contrary to the weight of the evidence adduced.
2. The Council's solicitor had at the close of his case failed to make out a *prima facie* case against the appellant on any of the charges preferred against him, and the Council should therefore have dismissed the said charges, and not called upon the appellant's defence as it did.
3. The Council's Legal Assessor had, at the close of the Council's Solicitor's case, wrongly directed the Council on the burden of proof required to be discharged by the Council's Solicitor in the proceedings, and on the meaning of "proof beyond a reasonable doubt."
4. The sentence imposed by the Council was manifestly excessive in the circumstances.

At the hearing of the appeal, the appellant abandoned the third ground of his appeal and proceeded with the other grounds.

Held, dismissing the appeal; (1) the appeal lies of right by the statute and the terms of statute do not limit or qualify the appeal in any way, so that the appellant is entitled to claim that it is in a general sense nothing less than a rehearing of his case and a review of the decision;

(2) notwithstanding the generality of the above language, the actual exercise of the jurisdiction is severely limited by the circumstances in which it can be invoked. The appeal is not by way of rehearing in the sense that the witnesses are heard afresh or the evidence gone over again. This, amongst other things, mean that there is a heavy burden upon an appellant who wishes to displace a verdict on the grounds that the evidence alone makes the decision unsatisfactory;

(3) beyond a bare statement of its findings of fact, the Disciplinary Committee does not in general give reasons for its decision as in the case of a trial in the High Court by a judge alone from which an appeal by way of rehearing lies to the Court of Appeal. It follows from this that the only circumstances in which an appellate court can reverse a view of the facts taken by the Disciplinary Committee would be a case where, on examination, it would appear that the committee had misread the evidence to such an extent that they were not entitled to make a finding in the state of the evidence presented before them;

(4) the Legal Assessor who assists the committee at its hearing is not a judge, and his advice to the committee is not a summing up, and no analogy with a criminal appeal against a conviction before a judge and jury can properly be drawn. The legal assessor simply advises the committee in camera on points of law and reports his advice in open court after he has given it. The committee under its president are masters both of law and of the facts and what might amount to misdirection in law by a judge to a jury at a criminal trial does not necessarily invalidate the committee's decision. Where a criticism is made of the legal adviser's account of his advice the question is whether it can fairly be thought to have been of sufficient significance to the result to invalidate the decision;

(5) in the result, although the jurisdiction conferred by statute is unlimited, the circumstances in which it is exercised in accordance with the rules approved by Parliament are such as to make it difficult for an appellant to displace a finding or order of the committee unless it can be shown that something was clearly wrong either (i) in the conduct of the trial or (ii) in the legal principles applied or (iii) unless it can be shown that the findings of the committee were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread.

Cases referred to:-

(1) *Bhandari* v. *Advocates Committee* [1956] 3 All E.R. 742.

(2) *Libman* v. *General Medical Council* [1972] A.C. 217.

(3) *McCoan* v. *General Medical Council* [1964] 1 W.L.R. 1107.

ORIGINATING MOTION.

C. S. Wu for the appellant.

Sachi Saurajen for the Medical Council of Singapore.

Chua J.: This is an appeal against the decision of the Singapore Medical Council that the appellant, Dr. Joseph Francis Lopez, had been guilty of infamous conduct in a professional respect and that his name should be removed from the Register of Medical Practitioners.

There were nine charges against the appellant. The charges were that on November 10, 1973, November 12, 1973, December 18, 1973, January 2, 1974, January, 11, 1974, March 14, 1974, May 9, 1974, June 5, 1974 and July 12, 1974, the appellant allowed one S. S. Pillai, his employee in his clinic known as The Lopez Clinic at Jurong, to issue and sign medical certificates to three persons when the said S. S. Pillai was not a registered medical practitioner.

The appellant is a medical practitioner in general practice and he had three clinics — The Lopez Clinic at Thong Teck Building, Scotts Road; Commonwealth Clinic & Nursing Home at Commonwealth Crescent and The Lopez Clinic at Taman Jurong (hereinafter referred to as the Jurong Clinic). There was at the material dates no resident doctor at the Jurong Clinic. S. S. Pillai is a qualified Hospital Assistant Grade II and at the material dates was the only employee at the Jurong Clinic.

Counsel for the appellant urged before this court two main points which he argued should result in the council's decision being set aside. The points are (1) that the Council's Solicitor had at the close of his case failed to make out a *prima facie* case against the appellant on any of the charge preferred against the appellant and the council should therefore have dismissed the said charges and not called upon the appellant's defence and (2) that the decision of the council is contrary to the weight of the evidence adduced.

Before considering these points it is necessary first to state the standard of proof required by a domestic professional tribunal and secondly the function of this court in proceedings of this nature.

Where knowledge or intention is an ingredient of a disciplinary offence it appears from the authorities that the criminal standard of proof applies. In *Bhandari* v. *Advocates Committee*[1] the Privy Council approved this statement by the Court of Appeal for East Africa:

"In every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague would be content to condemn on a mere balance of probabilities."

In *Libman* v. *General Medical Council*[2] the appellant, a consultant physician, was found guilty of serious professional misconduct by the Disciplinary Committee of the General Medical Council and his registration was suspended for six months. The terms of the Medical Act, 1956, confer a right of appeal from a decision of the General Medical Council to the Privy Council. The appellant appealed to the Privy Council. The Board was invited by counsel for the appellant to make some general observations on the nature of the jurisdiction exercised by the Board in proceedings of this nature. Lord Hailsham, delivering the judgment of the Board, said (at page 220):

"During the course of argument on the extent and exercise of this jurisdiction their Lordships were referred to *Felix* v. *General Dental Council* [1960] A.C. 704, 716, a decision under the parallel provisions of the Dentists Act 1957; to *Fox* v. *General Medical Council* [1960] 1 W.L.R. 1017; to *Sivarajah* v. *General Medical Council* [1964] 1 W.L.R. 112 and to *Bhattacharya* v. *General Medical Council* [1967] 2 A.C. 295, especially at p. 265. Of these authorities, the account of the jurisdiction by Lord Radcliffe in *Fox* v. *General Medical Council* at pp. 1020-1022 is the fullest and perhaps the best, but their Lordships draw the following general propositions from all four decisions:

(1) The appeal lies of right by the statute and the terms of statute do not limit or qualify the appeal in any way, so that the appellant is entitled to claim that it is in a general sense nothing less than a rehearing of his case and a review of the decision: see *per* Lord Radcliffe, *Fox* v. *General Medical Council* [1960] 1 W.L.R. 1017, 1020.

(2) Notwithstanding the generality of the above language, the actual exercise of the jurisdiction is severely limited by the circumstances in which it can be invoked. The appeal is not by way of rehearing in the sense that the witnesses are heard afresh or the evidence gone over again (see *per* Lord Radcliffe). This, amongst other things, means that there is a heavy burden upon an appellant who wishes to displace a verdict on the grounds that the evidence alone makes the decision unsatisfactory.

(3) Beyond a bare statement of its findings of fact, the Disciplinary Committee does not in general give reasons for its decision as in the case of a trial in the High Court by judges alone from which an appeal by way of rehearing lies to the Court of Appeal (see *per* Lord Radcliffe, at pp. 1021, 1023). It follows from this that the only circumstances in which an appellate court can reverse a view of the facts taken by the Disciplinary Committee would be a case where, on examination, it would appear that the committee had misread the evidence to such an extent that they were not entitled to make a finding in the state of the evidence presented before them.

(4) The legal assessor who assists the committee at its hearing is not a judge, and his advice to the committee is not a summing up, and no analogy with a criminal appeal against a conviction before a judge and jury can properly be drawn. The legal assessor simply advises the committee in camera on points of law and reports his advice in open court after he has given it. The committee under its president are masters both of law and of the facts and what might amount to misdirection in law by a judge to a jury at a criminal trial does not necessarily invalidate the committee's decision. Where a criticism is made of the legal adviser's account of his advice the question is whether it can fairly be thought to have been of sufficient significance to the result to invalidate the decision: see *Fox* v. *General Medical Council*]1960[1 W.L.R. 1017 and *per* Lord Guest in *Sivarajah* v. *General Medical Council* [1964] 1 W.L.R. 112, 116-117.

In the result, although the jurisdiction conferred by statute is unlimited, the circumstances in which it is exercised in accordance with the rules approved by Parliament are such as to make it difficult for an appellant to displace a finding or order of the committee unless it can be shown that something was clearly wrong either (i) in the conduct of his trial or (ii) in the legal principles applied or (iii) unless it can be shown that the findings of the committee were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread. Or, of course, an appellant can rely cumulatively or in the alternative on any combination of the three."

With these principles in view I now proceed to consider this appeal.

It is not in dispute that Pillai issued and signed the nine medical certificates while he was in the employ of the appellant. The only question before the council was whether or not the appellant knew that Pillai issued those certificates.

Dr. Benny Chan, the complainant, was at the material time the doctor of the National Iron & Steel Mills at Jurong and the persons to whom these nine medical certificates were issued were employees of the said Steel Mills. These certificates were sent to Dr. Chan for vetting and endorsement. When he received these certificates he said that he rang up Pillai on three occasions and asked about the medical certificates and on each occasion Pillai said he did what he did as "Dr. Lopez asked me to do it." On July 23, 1974, Dr. Chan swore a Statutory Declaration containing a complaint against the appellant.

Pillai, called by the council, denied the three telephone conversations alleged by Dr. Chan. He said in evidence that prior to his employment at the Jurong Clinic he had been in charge of an estate hospital in Malaysia and there he was permitted to issue medical certificates and that after he joined the Jurong Clinic he continued the practice of issuing medical certificates as before without being aware that what he was doing was wrong. He said the appellant had no knowledge that he was issuing medical certificates.

The only other witness called by the council was Zulkifli bin Abdullah who was employed in the Jurong Clinic as a clinic assistant for a month in November 1970. He said that after 5 p.m. he was in sole charge of the clinic and when a patient came he would telephone the appellant who would prescribe treatment over the telephone. He further said that the appellant

suggested that he issue a medical certificate if the patient needed it but he did not do so.

Counsel for the appellant submitted that there was not a tittle of evidence to establish that the appellant had knowledge that Pillai had issued the nine certificates. He said that the complainant's allegation of knowledge was based on hearsay evidence alleged to have received over the telephone from Pillai and this aspect of the evidence was categorically denied by Pillai who also said that the appellant had no knowledge that any of these certificates had been issued. As to Zulkifli, his evidence was completely irrelevant and prejudical and whose credit worthiness was shown to be nil. He complained that despite all that the council after deliberation held that a *prima facie* case had been made out and called upon the appellant for his defence.

It is true that the evidence of the complainant did not in any way establish that the appellant knew that Pillai had issued the nine medical certificates. But there was other evidence before the council.

Pillai was closely examined by the Solicitor and by the council regarding the running of the Jurong Clinic and his duties. His evidence was this. He had been in the employ of the appellant for 4 years and was at the date of the hearing before the council still in the employ of the appellant. Dr. Prasad was employed at the Jurong Clinic until 1973 and after that he was the only employee there. The appellant was at the Jurong Clinic from 7.30 a.m. to 9.30 a.m. and from 1 p.m. to 3 p.m. The Jurong Clinic was open up to 5 p.m. During the period that the appellant was not at the Jurong Clinic he was in sole charge of the clinic and he attended to the patients. He examined them and prescribed non-scheduled medicine and issued medical certificates. If it was a serious case he would send the patient to see the appellant at one of the other clinics of the appellant. A medical card was kept for each patient in which was recorded the medicine prescribed by him and the fees charged. If a medical certificate was issued it would not be recorded in the medical card. The appellant was unaware that he had been issuing medical certificates. The medical certificates were in a book serially numbered and each with a duplicate. Only one book was issued at a time and both he and the appellant made use of that book. When a medical certificate was issued either by him or the appellant he would cut out the duplicate from the book and file the duplicate in a file together with other duplicates and the file was kept in the drawer in the office. The medical certificate book was obtained from the appellant's clinic at Thong Teck Building whenever a book was finished and he would either collect it from the clinic at Thong Teck Building or the appellant would bring it to the Jurong Clinic. Approximately two or three books were used a year. He issued about twenty medical certificates a month and the appellant about ten a month. Six or seven patients would come to the Jurong Clinic in a day and he would attend to four or five of them. The appellant would check the daily takings each day by looking at the Cash Register.

The evidence is that there were one hundred medical certificates in a book. The nine medical certificates, the subject of the charges, were issued from six books, which means that between the period in question, November 1973 and July 1974, a period of eight months, about six hundred certificates were issued.

Then there is the evidence of Zulkifli. The reception of this evidence was not objected by counsel for the appellant. It is however, submitted before this court that Zulkifli's evidence is irrelevant.

The rules governing the disciplinary proceedings before the Medical Council are to be found in the Medical Registration Regulations 1972, Regulations 21 to 33. There is no provision in these Regulations which deals with the reception of evidence. In my view the evidence of Zulkifli is relevant to the matter into which the council was inquiring namely whether the appellant knew that Pillai had been issuing medical certificates.

Counsel for the appellant attacked the credibility of Zulkifli, the attack being based on the fact that Zulkifli was dismissed by the appellant for dishonesty. The credibility of a witness is eminently a matter for the council who saw and heard Zulkifli.

There was evidence, at the close of the case for the Solicitors, for the council to come to the conclusion that the appellant knew that Pillai issued the nine medical certificates.

The appellant would like the council to believe that throughout the four years that he had employed Pillai at the Jurong Clinic he was totally oblivious of the fact that Pillai was doing anything else beyond rendering first aid to the patients and was issuing medical certificates.

The council had before it the evidence of Pillai, the appellant and Cecilia Hooi (the appellant's administrative Secretary) relating to the way in which the Jurong Clinic was run, the way in which the medical certificate books were issued and used, the quantity of medical certificates books supplied, the way the duplicate medical certificates were kept in Jurong Clinic and other clinics of the appellant, the way the medical cards were kept. The council considered the evidence before it and it was entitled to come to the conclusion that the appellant must have known that Pillai was issuing medical certificates.

Counsel for the appellant submitted that the Council was wrong to order that the name of the appellant be removed from the register as the penalty ordered was manifestly excessive in the circumstances of this case. In support of his submission Council cited a number of cases which appear in Vol. 16 No. 1 of the *Singapore Medical Journal*, 1975. They are cases dealing with completely different situations.

It is clear from section 23(1) of the Medical Registration Act (Cap. 218) and Regulation 32(3) that where the Medical Council, after due inquiry, finds a practitioner guilty of infamous conduct in a professional respect, it has a discretion whether or not to order the name of that person to be removed from the register.

In *McCoan* v. *General Medical Council*[3] the Disciplinary Committee of the General Medical Council found on the facts that McCoan was guilty of infamous conduct in a professional respect and his name was

ordered to be erased from the medical register. On appeal to the Privy Council it was contended that the Disciplinary Committee was wrong to erase his name from the register. Lord Upjohn in delivering the judgment of the Board said (at page 1112):

"It is equally clear that where the committee exercises its power to erase, a right of appeal to their Lordships' Board is given by section 36(3) both against the findings of infamous conduct and the decision to erase. The powers of the Board to correct the determination of the committee on the hearing of such an appeal are in terms unlimited, but in principle, where a professional body is entrusted with a discretion as to the imposition of the sentence of erasure their Lordship should be very slow to interfere with the exercise of that discretion. There appears to be no authority directly in point under the Medical Acts but their Lordships have been referred to some analogous authorities in the cases of professional misconduct of solicitors.

Their Lordships are of the opinion that Lord Parker C.J. may have gone too far *In re a Solicitor* ((1960) 2 Q.B. 212) when he said that the appellate court would never differ from sentence in cases of professional misconduct, but their Lordships agree with Lord Goddard C.J. in *In re a Solicitor* ((1956) 1 W.L.R. 1312) when he said that it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct.

No general test can be laid down, for each case must depend entirely on its own particular circumstances. All that can be said is that if it is to be set aside the sentence of erasure must appear to their Lordships to be wrong and unjustified."

The penalty imposed in this case does not appear to me to be wrong and unjustified.

The appeal is dismissed and the appellant must pay the costs of this appeal.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

COLLIN DEVELOPMENT (PTE) LTD. v. HONG LEONG HOLDINGS LTD.

[O.C.J. (Chua J.) February 27, 1976]
[Singapore — Suit No. 3667 of 1974]

Easement — Right of way — Co-owners — Dominant tenement — Absence of owner of servient tenement — Cause of action of one co-owner against the other — Parties — Extinguishment and abandonment of easement.

The servient tenement was owned by a company which was defunct and was not a party in the action. The plaintiffs and the defendants have identical right of way over the occupation right on the servient tenement. Recently, the defendants commenced construction works of a building project situated partially on an adjoining property also owned by them and their dominant tenement. Their contractors began to use the right of way for access into and egress from the building site. The plaintiffs complained against the defendants for substantially interfering with their enjoyment of right of way. They sued for injunction restraining the defendant from using the right of way as aforesaid or for other purposes. The defendants counter-claimed for certain declarations.

Held: (1) the plaintiffs have no cause of action unless the plaintiffs proved that the defendants' action caused substantial interference with their enjoyment of the right of way;

(2) there was no evidence that the plaintiffs have been substantially obstructed by the defendants' building activities and operations;

(3) the plaintiffs have no cause of action as there was no substantial interference of the plaintiff's enjoyment of their right of way;

(4) the defendants were not entitled to the declarations as the servient owner was not a party of the proceedings.

Cases referred to:-

(1) *Hutton v. Hambro* 175 E.R. 1031.

(2) *Pettey v. Parsons* [1914] 2 Ch. 653.

CIVIL SUIT.

Lee Bon Leong for the plaintiffs.

Cheng Tim Pin for the defendants.

Chua J.: The plaintiff is the owner of two pieces of land known as Lot 111[32] and Lot 111[33] both of T.S. XXI in the District of Claymore, Singapore. The defendant is the owner of Lot 111[34] and adjoining Lot 561 (formerly known as Lot 122) of the same Town subdivision and District.

Adjoining Lots 111[32], 111[33] and 111[34] is Lot 111[31].

It is not in dispute that the owners of Lots 111[32], 111[33] and 111[34] have vested in them a right of way over Lot 111[31], which contains an area of 9,276 square feet (hereinafter referred to as "the right of way"). Lots 111[31], 111[32], 111[33], 111[34] were formerly one lot owned by Mutual Trading Ltd. Lot 111[31] is still owned by Mutual Trading Ltd.

The right of way was granted by Mutual Trading Ltd. (then in liquidation) in 1919 and the terms of the grant is in the following terms:

"And Together with full and free right and liberty for the purchaser his executors administrators and assigns being the owner or owners for the time being of the land hereby conveyed or any part thereof and their tenants and servants and all other persons authorised by him or them in common with others having a similar right from time to time and at all times hereafter at his and their will and pleasure to pass and repass with or without animals and vehicles, in along and over the reserve for road coloured yellow in the said plan."

The defendant is a firm of land developers and it was at the time of the filing of the writ in December, 1974, in the course of building 3 blocks of high rise flats and garden on its properties Lot 561 and Lot 111[34], known as "Grange Heights." The blocks of flats are built on Lot 561 and the garden, with tennis courts, is on Lot 111[34].

The plaintiff complained that (1) the defendant had permitted its contractors employed for the construction of Grange Heights to use the right of way for access into and egress from Lot 561; (2) the defendant's contractors had excavated the side table of the metal road on the right of way and the earth excavated was removed to the Grange Heights site for filling purposes; (3) the defendant was in the course of making up a metal road which led from Grange Heights in the direction of the right of way and the defendant intended to link up the road with Grange Road through the right of way; (4) the defendant was in the course of selling the apartments in Grange Heights, and in its brochure regarding Grange Heights the defendant represented that it intended to give the purchasers access to Grange Heights at three points, one of them from Grange Road through the right of way.